



CITY OF SANTA FE ADMINISTRATIVE MANUAL

Originating Business Unit:

**Risk and Safety Administration
Drug & Alcohol Program**

SUBJECT

Reasonable Suspicion, Drug/Alcohol Testing Policy For Non-CDL, Non Safety-Sensitive City Employees	Policy Number 62103-7-4	# Pages 09
	Effective Date 07/01/2005	Revision Date 10/16/07

1.0 PURPOSE AND APPLICABILITY:

- A. The purpose of this policy is to establish the City of Santa Fe's program and the procedures for implementing a reasonable suspicion drug and alcohol testing program.
- B. This policy applies to all City of Santa Fe positions/classifications not covered as CDL, safety-sensitive or under a federally mandated policy, or employees covered by the Police or Fire Departments' drug/alcohol testing policy.

2.0 POLICY STATEMENT

- A. The City of Santa Fe is committed to maintaining a drug free workplace to promote both the quality of its services and the safety of its employees, its customers and the public.
- B. This policy is intended to achieve a drug and alcohol-free workplace and to reduce the probability of accidents or incidents related to the use and/or abuse of alcohol and other drugs by employees, to establish procedures for drug and alcohol testing and to encourage early intervention through supervisory involvement.

3.0 PROHIBITED CONDUCT & RESPONSIBILITIES

- A. Every employee in accordance with this policy is:
 - 1. Prohibited from using, possessing, selling, purchasing, manufacturing, or distributing any controlled substance while on duty, or on City of Santa Fe property.
 - 2. Prohibited from being present on City of Santa Fe property (except off duty alcohol use at public events), reporting to work or performing work while under the influence of alcohol and/or drugs.
 - 3. Required to submit to an alcohol and/or drug test when reasonable suspicion exists that the on duty employee is under the influence of alcohol or drugs and the employee is directed by the City of Santa Fe, as outlined in this policy.
 - 4. Required to promptly report to the employee's supervisor whenever the employee observes or has knowledge of another employee who appears to be under the influence of drugs and/or alcohol.

B. Employees subject to this policy will also be subject to discipline in accordance with Section 11 of this policy if they:

1. Refuse to sign a consent form or refuse to provide a urine and/or breath sample (which refusal shall constitute a verified positive drug and/or alcohol test result): or
2. Attempt to alter, taint, or otherwise provide a false sample.
3. Test positive for the presence of drugs or alcohol as outlined in Section 10 of this policy.

4.0 DEFINITIONS

ALCOHOL means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

ALCOHOL TEST is a test that involves blowing forcefully into a mouth piece until the Evidential Breath Test (EBT) device indicates that an adequate amount of breath has been obtained to detect the level of blood alcohol content.

CONTROLLED SUBSTANCE is marijuana, cocaine, opiates, amphetamines or phencyclidine.

DRUG TEST is a urinalysis test under approved medical conditions and procedures to detect drugs administered.

DRUG/ALCOHOL PROGRAM MANAGER (DAPM) is the City employee responsible for administering the drug and alcohol-testing program.

EMPLOYEE refers to an individual employed by the City of Santa Fe.

EMPLOYEE ASSISTANCE PROGRAM (EAP) means a program made available to city employees for free, professional and confidential counseling designed to assist employees with any issues they request help in resolving.

MEDICAL REVIEW OFFICER (MRO) means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the City's drug testing program and who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information.

NON-CDL means an employee of the city who is not in a classification requiring a commercial drivers license.

NON-CDL means a city employee who is in a position not regulated by the Department of Transportation.

SUBSTANCE ABUSE PROFESSIONAL is a licensed physician (medical doctor or doctor of osteopath), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis

and treatment of alcohol and controlled substances-related disorders.

VERIFIED NEGATIVE TEST means a drug/alcohol test result reviewed by a medical review officer and determined to contain alcohol or prohibited drugs or their metabolites below the cutoff standards established for laboratories approved to conduct Department of Transportation (D.O.T.) testing.

VERIFIED POSITIVE TEST means a drug/alcohol test result reviewed by a medical review officer and determined to contain alcohol or prohibited drugs or their metabolites above the cutoff standards established for laboratories approved to conduct D.O.T. testing.

REFUSAL means failure to provide a urine or breath sample, or verbal refusal.

5.0 EDUCATION

Every affected City of Santa Fe employee will receive a copy of this policy and will be asked to read a copy of the Drug/Alcohol Policy. It shall be the responsibility of all supervisors to ensure that all employees under their authority read and understand this policy.

All supervisory personnel who are designated to determine whether reasonable suspicion exists will also receive a minimum of one hundred and twenty (120) minutes of training on the physical, behavioral, speech, and performance indicators necessary to establish reasonable suspicion of drug and alcohol use.

The City agrees to provide Reasonable Suspicion training for the Union President, Vice President and Chief Stewards on an annual basis.

6.0 SUBSTANCES TESTED

A. Alcohol

Employees subject to alcohol testing will have a sample of their breath tested for the presence of beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol. Breath alcohol testing forms shall be used. A breath alcohol level of 0.04% blood alcohol content or greater constitutes a positive test result. A confirmation test will be given if an employee's initial breath alcohol test level exceeds 0.04.

B. Drugs

Employees subject to drug testing will have a sample of their urine tested for the presence of (5) drugs, as follows:

1. Marijuana
2. Cocaine
3. Opiates
4. Amphetamines
5. Phencyclidine

All drug tests will be reported by the testing laboratory to a medical review officer (MRO) who will evaluate the results. After evaluation and interpretation, all verified positive test results will be reported by the MRO to the City of Santa Fe DAPM.

With respect to verified positive drug tests, the MRO will notify the employee that the employee has seventy-two (72) hours following notification which to request, at the employee's own expense, that the split urine specimen be tested by another Department of Health and Human Service (DHHS) certified testing laboratory. In the event that the split sample is negative, the employee will be reimbursed for expense of the test.

Failure to request testing of the split specimen within seventy-two (72) hours of being notified of a positive test by the MRO will result in the test results from the original specimen being accepted as the final test results.

Any refusal to submit to a drug/alcohol test, and all positive drug/alcohol tests, will be reported immediately by the testing facility to the City of Santa Fe Drug and Alcohol Program Manager (DAPM) or designee as required.

7.0 DRUG/ALCOHOL TESTING PROCEDURES

This policy incorporates all the applicable requirements for alcohol and drug testing procedures as set forth in Rule 16A for the City of Santa Fe's Transit Division. Specifically, the policy incorporates the federal regulatory mandates for alcohol and drug testing procedures required for transportation workplace drug testing programs:

49 CFR Part 40 Subpart A

40.3 Definitions

Subpart B- Drug Testing

- 40.21 The Drugs.
- 40.23 Preparation for Testing.
- 40.25 Specimen collection procedures.
- 40.27 Laboratory personnel.
- 40.29 Laboratory analysis procedures.
- 40.31 Quality assurance and quality control.
- 40.33 Reporting and review of results.
- 40.35 Protection of employee records.
- 40.37 Individual access to test and laboratory certification results.
- 40.39 Use of DHHS-certified laboratories.

Subpart C- Alcohol Testing

- 40.51 The breath alcohol technician.
- 40.53 Devices to be used for breath alcohol tests.
- 40.55 Quality assurance plans for EBTs.
- 40.57 Locations for breath alcohol testing.
- 40.59 The breath alcohol testing form and log book.
- 40.61 Preparation for breath alcohol testing.

- 40.63 Procedures for screening tests.
- 40.65 Procedures for confirmation tests.
- 40.67 Refusal to test and uncompleted tests.
- 40.69 Inability to provide an adequate amount of breath.
- 40.81 Availability and disclosure of alcohol testing information about individual employees.
- 40.83 Maintenance and disclosure of records concerning EBTs and BATs.

It is the intent of this policy that all employees subjected to testing will be provided with the same testing procedures, safeguards, confidentiality, and chain of custody provisions and integrity of the testing process as provided for federally mandated employees. To the extent, the above regulations conflict with the policy, the policy shall govern.

8.0 REASONABLE SUSPICION TESTING

- A. When two supervisors or a supervisor and the Drug/Alcohol Program Manager reasonably suspect that an employee may be under the influence of alcohol or impaired by a controlled substance, the employee shall be required to submit to a drug and/or alcohol test. The decision to require testing must be based on current and specific observations, such as appearance, behavior, speech, or body odors of an employee. The observations will be documented as provided in this policy. Reasonable suspicion shall exist before requiring the employee to take a drug test and/or alcohol test.

- B. In the event that a reasonable suspicion case involves a union employee, the supervisor is required to follow the procedure outlined in Article 12 of the AFSCME Collective Bargaining Agreement.

The Union President, Vice President or one of the Chief Stewards will assist in evaluating bargaining unit employees suspected of being under the influence of drugs and/or alcohol during working hours. The Union representative must arrive within sixty (60) minutes of notification from the Risk and Safety Division. If the Union representative does not arrive within 60 minutes, the evaluation will proceed. The Reasonable Suspicion determination will be made by a member of the Risk and Safety Division or his/her designee, the notifying supervisor, and the Union representative present, with the majority ruling.

Only those union officials who have been properly trained on the physical, behavioral, speech and performance indicators necessary to establish reasonable suspicion of drug and alcohol use, will be allowed to assist in making a determination on whether reasonable suspicion exists or not.

- C. Observation - Reasonable suspicion may include a combination of various factors such as slurred speech, red eyes, dilated pupils, incoherence, unsteadiness on feet, smell of alcohol or marijuana emanating from the body, inability to carry on a rational conversation, erratic behavior, unexplained inability to perform the job, or direct observation of alcohol or drug use.
- D. Documentation - Behavioral observation will be documented in writing on the prescribed form attached hereto as Exhibit A. The form is to be signed by the supervisor, union representative (in the case of a union employee) and the DAPM, and a copy of which will be provided to the employee upon request.

- E. An employee who is required to submit to an alcohol and/or drug test under this section must sign a consent form.
- F. The employee will be transported by the City of Santa Fe to the collection site and will be required to provide a breath and or urine sample, or both, following completion of the test, employees will be transported home and relieved of duty with pay pending the City's receipt of the result of the test from the MRO.

9.0 RETURN TO WORK TESTING

Employees who have been disciplined in accordance with Section 11 of the policy as a result of their first positive test indicating the presence of one or more of the substances listed in Section 6 will be required, prior to returning to work, to take a return to duty alcohol and/or drug test with a verified negative result in accordance with the City of Santa Fe's alcohol and drug testing procedures.

10.0 FOLLOW UP TESTING

Current employees who have been disciplined in accordance with Section 11 of this Policy as a result of a positive alcohol and/or drug test required under Section 6, upon return to work shall be subject to a minimum of six (6) unannounced drug and/or alcohol follow up tests during the first twelve (12) months following the employee's return to work, and further testing as recommended by the substance abuse professional for up to a minimum of sixty (60) months. In addition, employees who have self-referred will be subject to testing as indicated above.

11.0 CONSEQUENCES OF THE MISUSE OF DRUGS AND ALCOHOL

Any employee testing positive for any of the drugs specified in Section 6 of this policy, or who has a 0.04% blood alcohol content or greater for the alcohol screening test will be immediately removed from his/her position and placed on administrative leave with pay pending disciplinary action. Regardless of the outcome of a drug screen and the possible consequences, the employee will be provided with information from the City's employee assistance program (EAP) regarding alcohol and/or substance abuse and counseling and treatment programs.

A. Consequences of a Positive Drug or Alcohol Test

1. Conditional Retention

It is the City of Santa Fe's policy that current employees, who have a verified positive drug or alcohol test and are not subject to termination under Section 11 (A)(3) of this Policy, will be offered conditional retention of employment if the employee:

- a. Submits to an evaluation by a substance abuse professional approved by the City's EAP; and,
- b. Signs a conditional retention of employment agreement; and,
- c. If determined by a substance abuse professional to require assistance in resolving problems associated with drug abuse and/or alcohol misuse, the employee agrees to attend a City of Santa Fe approved treatment program and sign a monitoring

agreement with the City's EAP to ensure successful completion of the treatment program specified by the substance abuse professional; and,

- d. When approved to return to work by the substance abuse professional, is subject to a return to duty drug and/or alcohol test; and
- e. The employee who is conditionally retained must fully comply with the conditions of retention of employment, including successful completion of any treatment program specified by the substance abuse professional. The employee may utilize any accrued compensatory time, annual and sick leave and authorized leave under the FMLA until exhausted to cover the necessary leave.

2. Discipline for a first positive drug or alcohol test.

Current employees who have a confirmed positive drug or alcohol test will immediately be removed from duty and disciplined as follows:

- a. They shall be suspended for two (2) weeks without pay, which suspension without pay shall continue until the employee complies with Section 9.

3. Termination

Employees will be terminated if the employee:

- a. Possesses, sells, purchases, manufactures, distributes, or transfers any controlled substances in violation of city, state or federal law while on duty; or
- b. Consumes alcohol following an accident, when the employee has been notified that he/she is subject to a reasonable suspicion drug/alcohol test; or
- c. Refuses to submit to an alcohol and/or drug test when so directed by the City of Santa Fe, or
- d. Tampers or attempts to tamper with an alcohol and/or drug test; or
- e. Tests positive and was involved in an accident resulting in death, serious injury significant property damage; or
- f. Tests positive and is also being terminated for other misconduct which could independently result in their discharge; or
- g. Tests positive and has not completed the initial probationary period with the City of Santa Fe; or
- h. Does not appear and complete a follow-up drug and/or alcohol test following notification to appear for such tests or refuses to sign a consent form or,
- i. Has a second confirmed positive drug or alcohol test.

12.0 CONFIDENTIALITY

All testing will be conducted in accordance with the federal regulations cited herein to ensure test results are accurate and reliable. Further, the City of Santa Fe will carry out this policy in a manner that respects the dignity and confidentiality of those involved. No laboratory reports or test results shall appear in the employee's employment history unless they are a part of the disciplinary action taken. Disciplinary actions with regards to positive tests will be in an employee's personnel file for a minimum of 2 years or longer based on the EAP evaluator's recommendation for follow up testing, up to a maximum of (60) sixty months.

Laboratory reports and test results shall be placed in a special locked file maintained by the Drug/Alcohol Program Manager. Files relating to laboratory reports or test results maintained by the Drug/Alcohol Program Manager must be kept confidential and shall be disclosed only by consent of the patient. Test information, however, shall be released to the employee, the employer, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a certified positive drug or alcohol test. Upon request, an employee is entitled to obtain copies of any records pertaining to the employee's use of drugs or alcohol, including any records pertaining to the employee's drug or alcohol tests.

13.0 EMPLOYEE ASSISTANCE PROGRAM/SELF REFERRAL

The City of Santa Fe takes seriously its commitment to provide safe conditions to the public and its employees. Recognizing this commitment, the City maintains an Employee Assistance Program (EAP) that can provide access to professional services in an effort to aid any employee who has an alcohol or chemical dependency problem. Participation in this program is voluntary and all records regarding self-referral or acknowledgement will be kept confidential to the extent required by law.

All employees who suspect they may have alcohol or substance abuse problems are strongly encouraged to utilize employee assistance program resources before the problem affects their employment status. There will be no disciplinary action involved for voluntary self referral to the EAP. Voluntary self-referral, however, shall not relieve the employee from responsibility for adequate job performance. Self referral after notification of a required drug or alcohol test will not eliminate the requirement to take such a test and will not preclude the taking of a disciplinary action against an individual who fails a required drug or alcohol test.

Any costs for counseling or rehabilitation above and beyond the City's EAP allocation shall be the responsibility of the employee.

Questions about the City of Santa Fe's Employee Assistance Program may be addressed to the City's DAPM, or the Human Resources Department.

14.0 DOCUMENTATION INCORPORATED BY REFERENCE INTO POLICY

Exhibit 1. Observed Behavior Form

16.0 REFERENCES

- 16.1 49 CFR.40
- 16.2 49 CFR 655

17.0 REVIEW AND APPROVALS:

- 18.1 PREPARED BY: Debbie Rouse 10/16/07
Debbie Rouse, Safety Manager DATE
- 18.2 REVIEWED BY: M P Lujan 10-16-07
Mike P. Lujan, Risk Management/Safety Division Director DATE
- 18.3 REVIEWED BY: Frank Katz 10/17/07
Frank Katz, City Attorney DATE
- 18.4 REVIEWED BY: Kristine Kuebli 10/19/07
Kristine Kuebli, Human Resources Director DATE
- 18.5 APPROVED BY: Galen Buller 10/25/07
Galen Buller, City Manager DATE